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Via Certified Mail - Return Receipt Requested

June 4, 2012

Gerald Gall, Superintendent
or Head of Operations
City of Benicia Wastewater Treatment Plant
614 E 5th St.
Benicia, CA 94510

Office of the City Council
City of Benicia
250 East L Street
Benicia, CA 94510

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Gall, Head of Operations and City Council:

The Clean Water Act ("CWA" or the "Act") § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

Northern California River Watch ("River Watch") hereby places the City of Benicia, hereinafter referred to as "the Discharger" on notice, that following the expiration of 60 days from the date of this NOTICE, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Permit issued under CWA § 301(a), in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board - San Francisco Bay Region, Region Water Quality Control Plan ("Basin Plan") as exemplified by violations of permit conditions or limitations in the Discharger's National Pollutant Discharge Elimination System ("NPDES") Permit.

INTRODUCTION

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. See 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this NOTICE is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified in this NOTICE the NPDES Permit for the Benicia Wastewater Treatment Plant, and has specifically identified the applicable permit standard, limitation or condition being violated. A violation of the NPDES Permit is a violation of the CWA.

2. *The activity alleged to constitute a violation.*

Most often the NPDES Permit limitations being violated are self-explanatory and an examination of its language is sufficient to inform the Discharger, especially since the Discharger is responsible for complying with that Permit condition. In addition, River Watch has set forth narratives in this NOTICE describing with particularity the activities leading to violations and has incorporated by reference the Discharger's own records and other public documents in the Discharger's possession or otherwise available to the

Discharger regarding its NPDES Permit, compliance with that Permit and any other information designed to inform the Discharger or the public.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations identified in this NOTICE are the City of Benicia as owner and operator of the Benicia Wastewater Treatment Plant, identified as the Discharger, and those of its employees responsible for compliance with the NPDES Permit.

4. *The location of the alleged violation*

The location or locations of the various violations are identified in the Discharger's NPDES Permit and also in records created and/or maintained by or for the Discharger which relate to the Benicia Wastewater Treatment Plant and related activities as further described in this NOTICE.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined both RWQCB files and the Discharger's records for the period from June 1, 2007 through June 1, 2012. The range of dates covered by this NOTICE is from June 1, 2007 through June 1, 2012. River Watch will from time to time update this NOTICE to include all violations of the CWA by the Discharger which occur after the range of dates currently covered by this NOTICE. Some of the violations are continuous and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The person giving notice is Law Office of Jack Silver on behalf of Northern California River Watch, referred to in this NOTICE as "River Watch." River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams, and groundwater in Northern California. River Watch is organized under the laws of the State of California and located at P.O. Box 817, Sebastopol, CA 95472. The full name, address, and telephone number of the Law Office of Jack Silver appears in the Contact Information section below.

THE DISCHARGER'S OPERATION

The Discharger owns and operates the City of Benicia Wastewater Treatment Plant (the "Plant"), a secondary wastewater treatment plant, and its collection system (collectively considered "The Facility"). The discharge of treated wastewater from the Facility is currently

regulated under Order No. R2-2008-0014, NPDES Permit No. CA 0038091. The prior NPDES Permit was Order No. R2-2001-096, NPDES Permit No. CA 0038091.

The Discharger provides sewerage service to a population of approximately 28,000 individuals through 26 lift stations and 148 miles of pipeline. The Facility has a current dry weather design treatment capacity of 4.5 MGD, a peak one hour wet weather secondary treatment capacity of 18 MGD, and a maximum short term hydraulic capacity of 24 MGD. The Facility provides secondary treatment of wastewater from domestic, commercial and industrial sources within the City of Benicia. The wastewater treatment process includes influent screening and grinding, grit removal basins, primary clarifiers, secondary treatment via two parallel activated sludge basins or three parallel trains of rotating biological contactors (RBCs), followed by secondary clarification, chlorination and dechlorination.

Treated wastewater is discharged from Discharge Point 001 through a submerged diffuser to the Carquinez Strait, a water of the United States. The diffuser is south of the Facility approximately 500 feet offshore and at a water depth of 10 feet.

The Discharger's ageing wastewater collection system has historically experienced high inflow and infiltration (I/I) during wet weather. The structural defects in the collection system which allow I/I into the sewer lines, result in sewage system surface overflows (SSO) and exfiltration. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains which are connected to adjacent surface waters – all waters of the United States. Exfiltration is the subsurface release of raw sewage that travels subsurface to a surface water often via hydrologically connected ground waters. Exfiltration occurs on a continual basis and is evidenced by human markers. As recorded in California Integrated Water Quality System's ("CIWQS") Public SSO reports, the Discharger reported 74 SSOs between May of 2007 and April 2012, with a combined volume of 26,320 gallons. Benicia claims 13,276 gallons reached surface waters. On November 11, 2011 Benicia reported a volume of 2,250 gallons of untreated waste water from a city-owned water main at 125 East N Street, all 2,250 gallons of which reached the Carquinez Strait. (reported in CIWQS as "Carquinez Strait").

The Discharger has a history of non-compliance with the SSO reporting requirements of the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements ("WDR") Order No. 2006-0003-DWQ, governing the operation of sanitary sewer systems. The Discharger is a permittee under the Statewide WDR which requires that sewer system operators report SSOs to the CIWQS, including an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water. The Discharger's field reports regularly underestimate the SSO start time as well as the response time. In some cases, records indicate crews arriving within minutes of a reported spill. These equivalencies are highly unlikely and result in an under estimation of the duration and volume of the spill. In reporting a 509 gallon spill from November 6, 2010, where the

estimated start, notification, and end time are the same (09:00:00), the reporter admits, "It is our assumption that an unknown amount of sewage did migrate into the surface waters due to the high tide intervals ... we entered an arbitrary number of 1 because this system does not allow an unknown of 0 to be entered." Also, the Discharger's SSO records generally do not indicate what method was used to estimate the total volume of the spill, which also calls into question the estimates of volume recovered and volume which reaches a surface water.

As noted above, underground leakages, i.e. exfiltration, caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines have verified the contamination of the adjacent waters with untreated sewage. River Watch alleges that such discharges are continuous wherever ageing, damaged, structurally defective sewer lines in the Discharger's collection system are located adjacent to surface waters, such as Carquinez Strait. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The Discharger's chronic collection system failures pose a substantial threat to public health.

The discharges described herein constitute a nuisance, and are either: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during, or as a result of, the transportation, disposal, or treatment of wastes.

The Discharger's illegal discharge of untreated wastewater exceeding Basin Plan standards is a significant contribution to the degradation of the Carquinez Strait, Suisun Bay, and tributary waters, with adverse effects on beneficial uses of those waters. River Watch members residing or recreating in the area have a vital interest in bringing the Discharger's operations at the Plant and Facility into compliance with the CWA.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with its NPDES permit and the Basin Plan, and to prioritize remedial measures to reflect the biological impacts of the Discharger's ongoing non-compliance:

1. A reduction of collection system I/I through an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs. The CMOM program shall include:

- a. Completion of a Condition Assessment of sewer lines in the Discharger's collection system located within 200 feet of surface waters, including storm drainage channels and creeks,
 - b. The amendment of the Discharger's Sewer System Management Plan to specify that defective gravity sewer lines located within 200 feet of surface waters, including storm drainage channels and creeks, will be given a higher priority for repair and/or replacement than other sewer lines with comparable defects located more than 200 feet from surface waters;
 - c. Within two (2) years after completion of the Condition Assessment described in 1.a. above, the repair or replacement as needed of all sewer lines determined by the Condition Assessment to be significantly defective, defined as a reasonable likelihood to discharge untreated sewage to the nearby creek or drainage channel within five (5) years, using industry recognized Guidelines to assess severity of defects.
 - d. As an alternative to the requirement to repair all sewer lines determined to be significantly defective under section 1.c. above, the funding of human marker studies of all creeks within 200 feet of a significantly defective sewer line and creeks which are the receiving water into which a drainage channel within 200 feet of a significantly defective sewer line discharges. Where any such creek tests positive for a human marker such as caffeine, said creek will also be tested to determine whether the sewage contamination impairs the beneficial uses of said creek, based on the Basin Plan criteria for bacteria, bioaccumulation, dissolved oxygen and toxicity.
 - e. The studies described in this section shall be performed by water quality expert and private consultant Dr. Michael L. Johnson, former faculty member at the Center for Watershed Sciences at U.C. Davis, or by a water quality expert of comparable status and experience agreeable to both parties.
 - f. The provision of funding in the Discharger's Capitol Improvements Plan to CCTV all gravity sewer lines every ten (10) years, except for lines CCTV'd within the prior ten (10) years and lines constructed, replaced or repaired within the prior twenty (20) years.
2. A mandatory private sewer lateral inspection and repair program triggered by any of the following events:
 - a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within twenty (20) years prior to the transfer;

- b. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;
 - c. A change of the use of the structure served (1) from residential to non-residential uses, (2) to a non-residential use that will result in a higher flow than the current non-residential use, and (3) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3) years;
 - d. Upon replacement or repair of any part of the sewer lateral;
 - e. Upon issuance of a building permit with a valuation of \$25,000.00 or more;
 - f. Upon significant repair or replacement of the main sewer line to which the lateral is attached.
3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to state waters, including a more detailed account of SSOs and remedial actions to verify and document SSO start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions.
4. Creation of a web site capacity to track information regarding SSOs. In the alternative, a link from the Discharger's web site to the CIWQS Public SSO Reports. Provision of notification to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

VIOLATIONS

From June 1, 2007 through June 1, 2012, the Discharger has violated the requirements of its NPDES Permit, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in the Discharger's NPDES Permit with respect to the Benicia Wastewater Treatment Plant. Said violations are evidenced and reported in the Discharger's Self Monitoring Reports, testing data compiled in compliance with the Permit or other orders of the RWQCB, and other documentation filed with the RWQCB or in the Discharger's possession, and as evidenced by unpermitted discharges due to failures in the Discharger's collection system. Furthermore, these violations are continuing. The violations, established in Self Monitoring Reports, raw data and records of the RWQCB, SWRCB's CIWQS SSO Reporting Program Database Records include but are not limited to the following categories in the NPDES Permit:

Discharge Prohibitions

Violations	Description
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1800	<p><u>Collection system overflows caused by underground exfiltration</u> – an event in which untreated sewage is discharged from the collection system prior to reaching the Plant. Underground discharges are alleged to have been continuous throughout the 5 year period from June 1, 2007 through June 1, 2012.</p>
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Order No. R2-2001-096, Discharge Prohibitions A.5: “Discharges of water, materials, or wastes other than storm water, which are not otherwise authorized by an NPDES permit, to a storm drain system or waters of the State are prohibited.”

Order No. R2-2008-0014, Discharge Prohibitions III.E: “(No sanitary sewer overflows to waters of the United States): Discharge Prohibition No. 15 from Table 4-1 of the Basin Plan and the Clean Water Act prohibit the discharge of wastewater to surface waters except as authorized under an NPDES permit. POTWs must achieve secondary treatment, at a minimum, and any more stringent limitations necessary to achieve water quality standards. [33 U.S.C. § 1311 (b)(1)(B and C)]. Therefore, a sanitary sewer overflow that results in the discharge of raw sewage, or sewage not meeting secondary treatment requirements is prohibited under the Clean Water Act and the Basin Plan.”

Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger’s own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the Plant reported in Self Monitoring Reports, video inspection of the collection system, and testing of waterways adjacent to sewer lines, creeks, and wetlands for human markers, nutrients, pathogens and other constituents indicating sewage contamination.

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SSOs, as evidenced in the CIWQS Interactive Public SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents.

Order No. R2-2001-096, Discharge Prohibitions A.5: “Discharges of water, materials, or wastes other than storm water, which are not otherwise authorized by an NPDES permit, to a storm drain system or waters of the State are prohibited.”

Order No. R2-2008-0014, Discharge Prohibitions III.E: "(No sanitary sewer overflows to waters of the United States): Discharge Prohibition No. 15 from Table 4-1 of the Basin Plan and the Clean Water Act prohibit the discharge of wastewater to surface waters except as authorized under an NPDES permit. POTWs must achieve secondary treatment, at a minimum, and any more stringent limitations necessary to achieve water quality standards. [33 U.S.C. § 1311 (b)(1)(B and C)]. Therefore, a sanitary sewer overflow that results in the discharge of raw sewage, or sewage not meeting secondary treatment requirements is prohibited under the Clean Water Act and the Basin Plan."

Monitoring Requirements

Violations	Description
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1800	Failure to monitor, report or adequately describe violations. The majority of these violations occur due to failure to report violations of Discharge Prohibitions A.5 of Order No. R2-2001-096, failure to report violations of Discharge Prohibitions III.E of Order No. R2-2010-0014, as well as failure to adequately describe reported violations of said provisions.
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CONTACT INFORMATION

River Watch has retained legal counsel with respect to the issues set forth in this NOTICE. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
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CONCLUSION

The violations as set forth in this NOTICE effect the health and enjoyment of members of River Watch who reside and recreate in the affected communities. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this NOTICE.

River Watch believes this NOTICE sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations alleged in this Notice.

During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If the Discharger wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues raised in this NOTICE before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the 60-day notice period ends.

Very truly yours,


Jack Silver

JS:lhbm

cc: Administrator
U.S. Environmental Protection Agency
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✓ Regional Administrator
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